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Supplement to Petition for Re-Hearing

Supreme Court of the United States

No. 2 Original 1827.

THE STATE OF NEW MEXICO,

Vs. In Equity.

THE STATE OF TEXAS.

Supplement to Complainant's Petition for Re-Hearing

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SUPPLEMENT TO COMPLAINANT'S PETITION FOR RE-HEARING.

I do not feel at all certain that I have so presented the claim of complainant as to the course of the river in the lower part of the disputed area, as to make it perfectly clear and intelligible, as it seems that I did not succeed in doing so in my brief on the exceptions to the report of the Special Master.

Complainant's claim is that for approximately a little more than five miles from Texas Survey No. 3, in which the Frontera Observatory is located, a series of surveys made by Texas surveyors,

and put in evidence in the present case by Texas, clearly show the course of the river to be entirely different from that which is claimed by the defendant, as shown upon the blue print attached to complainant's petition for a rehearing, which blue print is a reproduction of an enlargement of defendant's Exhibit No. 62, and shows the course of the river claimed by defendant, beginning at a point a little south of the Frontera astronomical point established by Major Emory in 1852. I have had prepared a blue print showing all of the Texas surveys shown on that blut print, beginning with No. 174, which was made in 1860, running west and northwest as far as Survey No. 262, and this last blue print is submitted to the Court herewith for its consideration showing as it does the true north and variation common to all of the surveys. It will be seen at a glance that the course of the river as shown by these surveys, all of them made long before the present controversy arose, in no way can be reconciled to the course of the river as claimed by defendant. It will be seen that all of these surveys are connected so as to form an unbroken series, with the exception of a gap between Survey No. 3 and Survey No. 174, the last mentioned being the first shown on defendant's Exhibit No. 62. But that gap is filled up by an addition in the upper right hand corner of the blue print, where appears a reproduction of the plat of Survey No. 91 taken from page 3334 of the record, as to which it is necessary to call attention to an error either of the surveyor, or of a draftsman, by which there appears on that plat two surveys, each of them No. 91. This is clearly an error and an examination of the field notes of the survey at said page 3334 will show that the more westerly of the two should be No. 174 instead of No. 91, as it is marked "S.A.M. No. 91," and the field notes show that the survey of No. 91 begins at the southwest corner of Survey No. 3 and runs thence southwest 590 varas to a stake, and thence north to a stake on the old bank of the Rio Grande for the southeast corner of S. A. Maverick Survey No. 174, showing that No.

91 is bounded in part on the west by No. 174. This plat of the survey of No. 91 shows part of the Survey No. 3, as well as part of Survey No. 174, and is evidently on a different scale from the other surveys, all of which seem to be at 4000 varas to inch, and this survey of No. 91 must be somewhere about 500 varas to the inch. It also shows that 154 is west of 174 and 91. Taking this reproduction into account, it will be seen that from a point somewhat below Survey No. 3, the series is absolutely complete all the way to Survey No. 262.

Beginning at the northern end of the series, it will be found that Survey No. 262 by reference to page 3295 of the record, begins at a stake set on the bank of the river for the upper corner of Survey No. 261.

It will be further seen by reference to p. 3299 of the Record that the next Survey, No. 261, begins at the upper corner of Survey No. 260.

It will be further seen by reference to p. 3303 of the Record that Survey No. 260 begins at the southwest corner of Survey No. 259.

It will also be seen at p. 3306 of the Record that Survey No. 259 begins at the northwest corner of Survey No. 157.

It will further be seen by reference to p. 3310 of the Record that Survey No. 157 begins at a stake on the "Plia," that being the Texas spelling for the word "Playa," which stake is the southwest corner of Survey No. 156, and special attention is invited to the field notes of Survey No. 157, because they show that it was immediately opposite a high bluff on the New Mexico side of the river known as Santa Teresa, and runs thence north to a large stone near the foothills at what is known as the "Durasneta," another

misspelling of Texas, to which I have heretofore called attention.

By reference to p. 3316 of the Record it will be seen that Survey No. 158 begins at the upper corner of Survey No. 155 on the bank of the river. I call attention to the fact that the plat of this survey shows also the adjoining surveys Nos. 155 and 156.

By reference to p. 3323 of the Record it will be seen that Survey No. 155 begins at the upper corner of Survey No. 154.

By reference to p. 3327 of the Record it will be seen that the next survey, which is No. 154, is so described in the field notes that it is difficult, if not impossible, thereby to attach it to the other surveys. But this defect will be found supplied by reference to p. 3330 of the record where the plat of Survey No. 174 appears as bounded on the west by No. 154, and the field notes make it begin at the lower corner of Survey No. 154, and the reproduction of the plat of Survey No. 91, which appears in the upper right-hand corner of the blue print filed herewith, shows No. 154 as west of the survey for S. A. Maverick No. 91, which I have already shown is a mistake for No. 174.

The foregoing statement shows that these surveys in this series are connected one with another and all bounded at the south ends by the Rio Grande, as is shown by the blue print filed herewith, and all of these surveys were made many years before the present controversy had arisen as to the location of the river of 1850, and cannot be in any connected with the alleged Salazar-Diaz survey, which practically constitutes all there is of defendant's case.

Complainants contention has been and still is that the so-called Salazar-Diaz survey, above El Paso, as presented in the record is not a genuine survey, but a fictitious and fabricated record, which must have been made many years after its alleged date, and in sup-

port of this contention much has been, and may still be, said as to the errors apparent on the face of the alleged record of the survey, which also covers a stretch of about 40 miles between San Ignacio and El Paso as to which no error has been discovered, so that when we find errors in the record above El Paso there is created at least a suspicion of the genuineness of that part the alleged Salazar-Diaz survey, which record sets out that the work from El

Paso to Amoles, a distance of about 20 miles, was all done in nine days, while the 40 mile stretch below El Paso required four months. For 6 or 8 miles above El Paso the river runs through a rock-bound cañon, and the uncontradicted evidence shows that at one point on the west side of the river, which the Salazar-Diaz record was supposed to follow, the line falls so close to the hills on the east side of the valley, that there is not room for the river between the Diaz line and the foothills on the east, and that at another point the line ascends over the sides of the rocky hills 70 or 80 feet above the river, and that the line passes about 225 feet east of the International Boundary Monument on parallel 31° 47'; when as a matter of fact that monument is more than that distance west of the river; and the further fact that the series of surveys Nos. 154 to 162 as platted by defendant's experts to the Salazar-Diaz river, cannot be so platted without going beyond the limits of the valley and far upon the sand hills to the west thereof.

But I believe that it is unnecessary for the court to make any formal holding as to whether the Salazar-Diaz survey is fictitious and fabricated or not, because the evidence of the original Texas surveys as shown on the blue print herewith, beginning as early as 1854, shows such a different river that it cannot be reconciled with the Salazar-Diaz river and constitutes evidence of a superior and conclusive character as to the course of the river years before the present controversy arose.

If the court adopts my view, it should declare that the boundary of this part of the disputed portion is as shown by this series of surveys, beginning with No. 3, as that contains the Frontera Observatory, as to the location of which the experts on both sides in the present case have fully agreed, and in this connection reference should be made to the fact that the alleged Salazar-Diaz record locates the Frontera Observatory about 250 feet away from its correct location, and this is not disputed but agreed to by the experts on both sides, as will appear by reference to pp. 2809-10 of the Record. It is quite incredible that an accomplished engineer such as Diaz appears to have been, could possibly have made a mistake as to the location of Frontera in August, 1852, when it had been established by Major Emory in April of the same year. Stevenson Archer, district surveyor of El Paso District, in making Survey No. 3 in November, 1854, appears to have had no difficulty in fixing the astronomical point of Frontera by course and distance, as will be seen by reference to p. 3338 of the Record. Nor does John P. Randolph, deputy surveyor of El Paso County, appear to have had any difficulty in fixing that astronomical point as late as March 2, 1888, as will appear by his field notes of Survey No. 91 at p. 3334 of the Record. Nor did John H. Clark appear to have had any difficulty in locating Frontera in 1859, and his field sketch which appears at p. 3120, as plaintiff's Exhibit No. 26, shows Frontera and the course of the river for more than a mile above and might serve as assistance to any commissioner appointed by the court in ascertaining the course of the river above Frontera.

I submit to the court that the alleged Salazar-Diaz record cannot be relied upon to any extent as showing the course of the river, which is the boundary, and should be discarded from all consideration by the court, or by any commissioner appointed by the court to delineate the boundary on the ground.

The object of the court is, of course, only to establish the location of the river of 1850 as the boundary, and the series of Texas surveys as hereinbefore set out, and as they appear on the blue print filed herewith, are quite conclusive evidence as to where the river flowed before the alleged discovery of the Salazar-Diaz record, which as I now recollect, appears first to have come to light about 1908.

I cannot tell how far above Frontera the line of the river can be followed according to the Texas surveys, but it must be nearly one-half of all of the disputed area. There is no evidence in the record to show that the river above the end of these surveys ever occupied any position near the west side of the valley as claimed by Texas, except the discredited Salazar-Diaz record, and the extraordinary conclusion reached by the Scott-Cockrell Commission, which I will not undertake to discuss any further at this time, as I believe sufficient has been presented in connection with the petition for rehearing to show that it is entirely unworthy of belief, as that commission does not appear ever to have made the slightest attempt to reestablish any of the Clark lines, which was the purpose of its creation, except as to the location of Monument No. 1, which I believe I have heretofore shown was without any sufficient foundation.

In conclusion, it must be said that there can be no valid objection on the part of defendant to the adoption for the location of the river, of a line indicated by its own surveys which defendant has sponsored by putting them in evidence, which is not far from that indicated by the map of Post, based upon information from old men. That line naturally does not follow each crook or bend as shown by the southern ends of the Texas surveys. I am urging the adoption by the court of a river, as the boundary, shown by defendant's own evidence as far up the river as Survey, No. 262, beyond which we have no direct connection. How far up the river

that will take us, I cannot say, but it seems certain that it must be as far as the preposterous survey of the Canutillo Grant and probably into that survey. From there on, it is impossible without evidence, of which there is none, to carry the river across the valley to the west so as to connect with the river claimed by Texas in the northern part of the disputed area, or with the river established by the Scott-Cockrell mission at the 32nd parallel.

We are then left, beyond Survey No. 262, without any satisfactory evidence as to the course of the river except what is shown by Post's map based on information from old men, and as that map so based is shown to be approximately correct by defendant's own evidence between Frontera and the upper end of No. 262, it is only reasonable to believe that it is correct beyond No. 262.

And if the Court will hold that Clark's Monument No. 1 was at his station No. 1, there will be little or no difficulty in delineating the course of the river from No. 262 to a point 600 feet west of that Monument No. 1, Clark having said that the river was 600 feet from his Monument No. 1.

In any event, whether the court holds that the so-called Salazar-Diaz record of a survey so far as the part above El Paso is concerned, was or was not fabricated long after its date in 1852, as I am convinced it must have been, yet it is shown to be so erroneous and defective as to afford no guidance as to the location of the river at that time at any place, especially as it is shown beyond doubt by defendant's own evidence to be entirely wrong for a number of miles. The maxim as to false in part is applicable and destroys all belief in it as a whole.

All of which is respectfully submitted.

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